S.B. Criminal Misc. Petition No.1409/2005.
(Brij Kishore Vs. State of Rajasthan)

June 02, 2006.

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.D. Rajpurohit for the petitioner.
Mr. S.K. Vyas, G.A. for the D.O.P.
Mr. Ashok Upadhyay, P.P. for the State.

By way of filing the present petition under Section 482, Cr.P.C., the petitioner has challenged the FIR No.7/2001 dated 05.01.2001 qua him before the Anti-Corruption Department, Chittorgarh for offences under Sections 13(1)(c), 13(1)(d) and 13(2), Prevention of Corruption Act, 1988, read with Sections 420, 467, 468, 471 and 120B, I.P.C.

It is contended by learned counsel for the petitioner that the petitioner is an employee of registered cooperative society viz., the Chittorgarh Central Cooperative Bank Ltd., Chittorgarh holding the post of Branch Manager. An FIR was registered against Shri G.P. Jorwal and Shri Narendra Singh Kothari. Shri G.P. Jorwal is member of Rajasthan Co-operative Services and as such is removable only by the State Government and he is public servant as defined under the Act of 1988. There was allegation of corruption against him in the transactions relating to puchase of chairs for the Cooperative

Banks. It is submitted that in the investigation the offences were found to be made out against both the accused Shri G.P. Jorwal and Shri Narendra Singh Kothari; and, for the purpose of filing challan, it was necessary to obtain sanction of the State Government, therefore, the case of Shri G.P. Jorwal was moved to the State Government, in the Department of Personnel for granting the necessary sanction for prosecution. But, vide communication dated 10.10.2002, the State Government refused to grant sanction for prosecution against Shri Jorwal stating that involvement of Shri Jorwal in any criminal conspiracy is not made out on scrutiny and, therefore, action under the provisions of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 may be taken against Shri Jorwal.

It is material to mention here that said Shri G.P. Jorwal was working in the Bank as Managing Director and he worked on the said post. As per allegation in the FIR, a supply order was given to one Shri Narendra Singh Kothari for supply of local made chairs by Shri G.P. Jorwal and, as per the allegation, the said order for supply of chairs was made by Shri Jorwal without following the procedure of inviting tenders and other proceedings in accordance with rules. It is alleged that due to this action excess payment of Rs.1,24,800/- was made to the firm M/s Diamond Furniture, Chittorgarh of which said Shri Narendra Singh Kothari is the

proprietor of the firm. As per the allegation, the rate per chair was approved at Rs.2,300/- but due to interpolation, the the firm filed bills at the rate of Rs.2,800/- per chair. As per investigation, Shri G.P. Jorwal, petitioner Brij Kishore, one Ashok Kumar and the Private Secretary of Shri G.P. Jorwal, Naresh Saxena were held to be responsible for supervisory negligence and interpolations resulting in financial losses to the State.

It is submitted by learned counsel for the petitioner that by some malicious trick the main culprit Shri G.P. Jorwal, named in the FIR is being given political protection and the petitioner has been picked to be made the scapegoat though there is no criminal liability attributable to the petitioner who, at the relevant point of time was posted as Manager in the Head Office for less than 2 months only i.e., from 17.07.2000 to 10.09.2000. It is submitted that during this period the petitioner was discharging the duty mainly as Branch Manager of several branches situated at various places in the town of Chittorgarh. It is contended that the alleged lapses in the case were all over and are assignable to the period prior to the petitioner joined in Chittorgarh and as such the petitioner had nothing to do with the alleged offences.

It is contended by learned counsel for the petitioner that as per the provisions of the Act of 1988, it is well settled that without at least one

person being public servant as defined in the Act of 1988 as accused no charge-sheet against others is permissible to be filed, however, the Collector, Chittorgarh though knowing well that the State Government has declined prosecution sanction against the main culprit Shri G.P. Jorwal and opined that action as per the provisions of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 may be initiated against him, accorded sanction for the prosecution of the petitioner before the criminal Court despite the fact that the petitioner is not named in the FIR. He emphatically contended that even the then Collector expressed the opinion that the petitioner is a ministerial functionary and no liability of the persons like the petitioner can be assumed. He argued that even otherwise also, the main culprit Shri G.P. Jorwal cannot avail of the plea that he entered into the disputed transactions relying upon the subordinates because the authority is legally bound to apply mind in the discharge of its authority.

Learned counsel for the petitioner next invited attention of the Court towards Sections 2 and 4 of the Act of 1988. The relevant provisions of the said Sections read as under :

> "2(c)(ix).-any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central

> Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);"
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> "4(3).-When trying any case, a special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

It is contended by learned counsel for the petitioner that the main offence is applicable to the public servant and offence under Section 120B, I.P.C. is applicable in respect of other accused in the case with him, therefore, the reason given by the State Government for refusal of sanction with the expression of opinion of non-involvement in the conspiracy is irrelevant as the offence is not under Section 120B, I.P.C. but all the main offences in the case are alleged against him and others are implicated in the case with the aid of Section 120B, I.P.C. As per contention of learned counsel for the petitioner, the petitioner is not a public servant and since the prosecution sanction has been refused by the State Government against the main accused Shri G.P. Jorwal with the expression of opinion that action under the CCA Rules can be taken, now, no

challan can be filed against the petitioner under the Act of 1988. It is vehemently argued that in this case except the main accused Shri G.P. Jorwal, Managing Director no other accused is a public servant as per the definition given in the Act of 1988. Learned counsel for the petitioner further argued that in the investigation also there is no evidence against the petitioner to connect him with the alleged offence with regard to causing financial losses to the State due to excess payment upon the bills filed by Shri Narendra Singh Kothari, therefore, the proceedings against the petitioner requires to be quashed.

By way of filing an application, learned counsel for the petitioner has invited attention of the Court towards the decree passed by the Addl. District Judge, Chittorgarh in the suit filed by the Bank against Shri Narendra Singh Kothari. It is submitted that after a full-fledged trial of the suit the civil Court decreed the suit for recovery of Rs.50,500/- against said Shri Narendra Singh Kothari alongwith 9 per cent interest. He contended that it is thus obvious that Shri Narendra Singh Kothari has been held liable for drawing excess payment in connection with supply of chairs. It is argued by learned counsel for the petitioner that the finding of fact arrived at by the civil Court is binding upon the criminal Court. He invited my attention towards

the judgments reported in AIR 1971 SC 1244, AIR 1996 SC 339, 2004 (1) SCC 438. It is argued that in all these case the apex Court has categorically held that the finding of the civil Court is binding upon the criminal Court including the investigating agency.

Learned counsel for the petitioner next invited my attention towards the judgment of the Supreme Court in the case of Savita Vs. State of Rajasthan, Criminal Appeal No.132 of 2005 (arising out of SLP (Crl.) 1735/2004), dagted 18.01.2005. The relevant excerpts read as under :

> "The second respondent relied upon a judgment of this Court in the case of V.M. Shah vs. State of Maharashtra & Anr., 1995 (5) SCC 767 wherein this Court while entertaining an appeal against the conviction under Section 633 of the Companies Act had held that a finding given by the civil court is binding on the criminal court. We have no quarrel with the said proposition,.....
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> The second respondent further contended that subsequently in the divorce proceeding the Court has given a conclusive finding that the allegation made by the appellant-Savita is not established, but that is a finding again given by the civil court subsequent to the impugned judgment in this case. Even otherwise as held by us hereinabove that is a material to be taken note of by the investigating agency or the court before whom the charge sheet is filed."

On the other hand, learned counsel for the State vehemently opposed the petition and submitted that after investigation the matter was referred for prosecution sanction against the Managing Director Shri G.P. Jorwal but the Government refused to grant sanction against him and decided to take action in accordance with the provisions of the CCA Rules, 1958. He submitted that the Collector, Chittorgarh, however, after considering the matter, accorded sanction for the prosecution of the petitioner during whose tenure the payment was made to the firm for supply of the chairs as a result of which the State suffered financial loss of Rs.1,24,000/-.

I have carefully gone through the material placed on record as well as judgments cited by learned counsel for the petitioner.

It may be noted here that on 20.12.2005 while issuing the notice, a detailed order was made by this Court directing the non-petitioner No.1 and the Secretary, Department of Personnel, Government of Rajasthan, Jaipur to furnish detail of the pendency of cases for the grant of prosecution sanction. In pursuance of the direction issued by this Court, the Government Advocate has filed a reply alongwith additional affidavit and a list of cases of persons in respect of whom the consideration for prosecution sanction is pending. It is very strange that since last many years cases are pending for taking decision

to grant prosecution sanction or not. The said list comprises of nearabout cases of 75 persons including various officers; meaning thereby, the Anti Corruption Department has completed the investigation and the sent the matters to the State Government and the State Government is sitting over the matters for taking decision and, for want of decision by the State Government, it is not possible for the Anti Corruption Department to file challan or to take any other decision in the matter.

It is further significant to mention here that cases are pending for prosecution sanction since 1995, 1996 and 1997 and the persons involved are holding the office and happily seated to wield power and authority. In the present case, the FIR was registered in the year 2001 and investigation was completed; and, in the year 2002, decision with regard to refusal for grant of prosecution sanction against main accused G.P. Jorwal was given and the Government decided to initiate departmental proceedings in accordance with CCA Rules. Upon consideration of the material on record, when the State Government reached conclusion that the alleged action did not require the criminal prosecution and is subject-matter of initiation of proceedings under the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 it obviously sounds prejudicial to differently decide upon the same

material in respect of co-accused subordinate whereas the allegations of alleged lapses are pointedly against the public servant who is the main culprit. It is significant to mention here that while the Collector, Chittorgarh accorded sanction of prosecution against the petitioner nothing has been said as to how the case of the petitioner who is not named in the FIR warrants criminal prosecution. It must be noted that unless enquiry, as suggested by the State Government in its opinion, under the CCA Rules could be held against the public servant Shri G.P. Jorwal, Managing Director and finding could be recorded, the question of shifting of incriminatory liability cannot arise. It was incumbent upon the District Collector to consider this aspect of the matter; moreover, coupled with the fact that before the posting of the petitioner in Chittorgarh the lapses were committed and all over and only the final payment was made while the petitioner was posted there but, that too, by the orders of the Managing Director G.P. Jorwal.

There is force in the argument advanced by learned counsel for the petitioner that there is no evidence against the petitioner to prosecute him. There is no allegation of embezzlement, there is no allegation of misappropriation of money. In the entire investigation, the only evidence is about certain irregularities and, for the same also, the petitioner

who remained posted for a period commencing from 17.07.2000 to 10.09.2000 cannot be blamed. Therefore, while inviting attention towards the judgment reported in 2006 (2) SCC (Crimes) 49, it is contended that the proceedings in pursuance of the FIR of this case in which there was no allegation against the petitioner is required to be quashed. Learned counsel for the petitioner also contended that the petitioner is also entitled for the same treatment which is given to the Managing Director Shri G.P. Jorwal and as such, if at all, disciplinary action is taken against Shri G.P. Jorwal then disciplinary action may be taken against the petitioner.

Even otherwise also, the case of the petitioner is on lesser footing than the case of the Managing Director G.P. Jorwal, therefore, when the State Government refused sanction against the Managing Director and opined a departmental enquiry against him under the relevant rules, the petitioner could not be picked up for criminal prosecution. There is force in the contentions of learned counsel for the petitioner.

As per the certified copy of the judgment dated 29.03.2005 filed by learned counsel for the petitioner, after trial of the suit, the trial Judge ordered the liability of recovery of payment against Narendra Singh Kothari, therefore, the finding

arrived at by the civil Court has a binding force in respect of the same controversy. In the circumstances, when the State Government has refused sanction for prosecution against the Managing Director and decided to hold department proceedings against him, the petitioner who is not a public servant and is only an employee subordinate to the Managing Director, cannot be prosecuted before the finding of fact is arrived at in the departmental proceedings against G.P. Jorwal. Unless there is specific and direct evidence with regard to criminal liability no case is made out to prosecute the petitioner.

In my opinion, the complaint does not disclose commission of any criminal offence by the petitioner. The case was of civil nature if any excess payment was made and, in fact, remedy before the civil Court is availed of by the department and decree was passed against the supplier and the same has a binding force upon the proceedings before the criminal Court.

As a result, this petition is allowed. The criminal proceedings against the petitioner and the action taken by the Anti Corruption Department against him in connection with FIR No.7/2005 dated 05.01.2001, qua the petitioner, is quashed.

(Gopal Krishan Vyas) J.